SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 875

THE FIRST NATIONAL BANK OF LOGAN, UTAH, PETITIONER,

vs.

WALKER BANK & TRUST COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

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[fol. 1]

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

No. C-137-63, Civil.

WALKER BANK & TRUST COMPANY, a corporation, Plaintiff,

vs.

JAMES J. SAXON, Comptroller of the Currency; and THE FIRST NATIONAL BANK OF LOGAN, of Logan, Utah, a National banking association, Defendants.

COMPLAINT—Filed July 9, 1963

1. Plaintiff is a banking corporation organized under the laws of the State of Utah. The defendant, James J. Saxon, Comptroller of the Currency (hereinafter referred to as the Comptroller), is a duly constituted officer of the Executive Branch of the Government of the United States, maintaining his official residence and place of business in the District of Columbia and is an "agency" of the said Government within the meaning of Title 5, United States Code, Section 1001. The defendant, The First National Bank of Logan, of Logan, Utah (hereinafter referred to as the Defendant Bank), is a national banking association organized and existing under the National Banking Act and is a national bank established in the State of Utah at the City of Logan in said State, which City is a city of the second class as cities are classified by the statutes of the State of Utah.

[fol. 2] This action arises under Section 36 of Title 12 of the United States Code commonly referred to as the

National Banking Act. As hereinafter set forth, plaintiff is engaged in the banking business in the State of Utah and in the said City of Logan where it has a large investment in capital, property, equipment and good will and irreparable damage will be sustained by plaintiff unless the relief herein prayed for is granted. The amount in controversy exceeds, exclusive of interest and costs the sum of $10,000.

This is a proceeding (1) for a declaratory judgment that the issuance by the Comptroller of a certificate authorizing the establishment and operation by the Defendant Bank of a branch bank in the City of Logan, Utah, is in violation of Title 12, United States Code, Section 36; (2) to compel the said Comptroller to rescind the said certificate; and (3) to enjoin the Defendant Bank from establishing or operating such branch bank.

There is no special statutory review proceeding relevant to the subject matter of the action in any court specified by statute and the action of the Comptroller in the issuance of a certificate authorizing the establishment and operation by the Defendant Bank of a branch bank in the City of Logan, Utah, is a final agency action within the meaning of Title 5, Section 1009, United States Code.

2. Plaintiff now is and has been for many years engaged in the banking business in the State of Utah. It maintains its main office and principal place of business at Salt Lake City, Utah. On the 18th day of December, 1956, plaintiff took over and acquired the Cache Valley Banking Company by a statutory merger under and in accordance with the laws of the State of Utah whereby said Cache Valley Banking Company was merged with and into plaintiff as the resulting bank. Prior to the time when plaintiff took over and acquired the Cache Valley Banking Company it was a bank organized under the laws of the State of Utah and regularly transacting a customary banking business at its banking house located in the City of Logan, State of Utah, and upon and following said merger plaintiff

continued to transact such banking business at its banking house in the said City of Logan, which banking house, prior to the effective date of said merger, had been the banking house of Cache Valley Banking Company. Said Cache Valley Banking Company had been in operation as a bank for a period of more than five years prior to the time it was taken over and acquired by plaintiff through said merger.

[fols. 3-5] 3. The Defendant Bank, a national banking association, was on January 21, 1963, and for many years prior thereto, a national bank regularly transacting a customary banking business at its banking office in the said City of Logan, State of Utah. Prior to January 21, 1963, the Defendant Bank made application to the Comptroller for authorization to establish a branch bank in the City of Logan, Utah, and the Comptroller, on or about January 21, 1963, issued a certificate authorizing the Defendant Bank to establish and conduct a branch bank in the City of Logan with full power to conduct a general banking business at said branch bank.

4. At the time said application was made by said Defendant Bank with the Comptroller and at the time of the issuance of the said certificate of authorization by the Comptroller and for many years prior thereto, there were three banks located in said City of Logan, each regularly transacting a customary banking business: Walker Bank & Trust Company, Cache Valley Branch; the First Security Bank of Utah, N.A., Logan Branch; and the Defendant Bank.

5. Title 12, United States Code, Section 36(c) provides in part, as follows:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) *Within the limits of the city, town or village in which said association is situated, if*

such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, *if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition,* and subject to the restrictions as to location imposed by the law of the State on State banks." (Emphasis added)

Under the foregoing provision of the National Banking Act, a national banking association can only establish and operate a branch if at the time of such establishment and operation the said privilege is granted to state banks by statute law expressly granting such right and the right is subject to the same restrictions as to location as are imposed by state law on state banks.

[fol. 6] 6. Section 7-3-6, Utah Code Annotated 1953, as amended, provides in part, as follows:

"7-3-6 . . . Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank . . ."

The City of Logan, Utah, is not now and was not at any of the times referred to herein a city of the first class within the meaning of said Section 7-3-6 nor within an unincorporated area of a county in which a city of the first class is located and the Defendant Bank did not take over an existing bank for the purpose of establishing the said branch bank in the said City.

7. The action of the Comptroller in authorizing the establishment of a branch bank in the City of Logan by

the Defendant Bank is invalid, contrary to and in violation of Title 12, United States Code, Section 36(c) because the establishment of such a branch by the Defendant Bank was not authorized at the time to state banks by the laws of Utah, and the Comptroller was without legal authority to issue to the Defendant Bank his certificate of authority to establish and operate a branch in the City of Logan, Utah, and the establishment and operation of such branch bank by the Defendant Bank under the purported authority granted by the Comptroller is prohibited by and in violation of Title 12, United States Code, Section 36(c) and unless the Defendant Bank is restrained and prohibited from establishing and operating a branch bank in the City of Logan, Utah, irreparable injury and damage to plaintiff will result.

Wherefore, plaintiff prays for a judgment declaring that the action of the Comptroller in authorizing the establishment and operation by the Defendant Bank in the City of Logan, Utah, was and is prohibited by Title 12, United States Code, Section 36(c) and that the issuance of the certificate by the Comptroller to the Defendant Bank authorizing the establishment and operation of said branch is void and of no effect and that this court issue its order compelling the Comptroller to rescind the said certificate [fol. 7] and restraining the Defendant Bank from establishing or operating a branch bank in the City of Logan, Utah, under or pursuant to said certificate and that this court grant such further relief as may seem just and proper in the premises.

Joseph S. Jones, C. E. Henderson, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

ANSWER OF FIRST NATIONAL BANK OF LOGAN, UTAH—
Filed October 4, 1963

First Defense

Plaintiff's complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

The court lacks jurisdiction of the subject matter of this action as the authorization by the Comptroller of the Currency for this answering defendant to establish branch bank in the city of Logan, Utah, is not reviewable by the court.

Third Defense

1. Answering the allegations grouped under No. 1 of plaintiff's complaint: This defendant admits the allegations of paragraphs one and four of said allegations numbered one, also admits that proceedings commenced by plaintiff were for: (1) a declaratory judgment, (2) to compel the Comptroller of Currency to rescind the certificate of approval issued to this defendant to establish an inside branch bank, and (3) to enjoin this defendant from operating a branch bank. This defendant denies that irreparable damage will be sustained by plaintiff unless said relief is granted and alleges that no damage will be sustained by plaintiff, in fact, under a National Emergency plaintiff may be benefited by the establishment of a new branch bank of this defendant as authorized by the Comptroller of Currency.

[fol. 8] 2. Answering paragraph 2 of plaintiff's complaint: This defendant admits that plaintiff has been engaged in banking business in the State of Utah for many years and maintains its office and principal place of busi-

ness in Salt Lake City, Utah, and that on the 18th day of December 1956 a merger agreement was executed between the Cache Valley Banking Company of Logan, Utah, and plaintiff which said agreement is now on file in the office of the Secretary of State of the State of Utah, and that prior to said agreement the Cache Valley Banking Company had been in operation for a period of more than five years prior to the date of said merger agreement.

3. Answering paragraph 3 of plaintiff's complaint: This defendant admits all of the allegations therein contained, except the said branch bank of this defendant was given power to conduct a general banking business as an inside branch bank of said defendant at 444 North Main in Logan, Utah.

4. Answering paragraph 4 of Plaintiff's complaint: This defendant alleges that at the time the application was made by defendant with the Comptroller of Currency for the issuance to it of a certificate of authorization to establish a new inside branch bank in Logan City there was in said city only one bank, the First National Bank of Logan, Utah, and two outside branch banks viz., a branch of The Walker Bank and Trust Company, and a branch of The First Security Bank of Utah NA.

5. Answering paragraph five this defendant admits that title twelve United States Code section 36-C provides as quoted in plaintiff's complaint.

6. Answering paragraph six of plaintiff's complaint this defendant admits that section 7-3-6 Utah Code Annotated contains the information as quoted in plaintiff's complaint and that the City of Logan was not a city of first class in the State of Utah at the time the certificate of authorization was issued to this defendant to establish a new branch bank.

7. Further answering plaintiff's complaint this defendant denies generally and specifically each and every alle-

gation of plaintiff's complaint not herein admitted, modified or explained.

[fol. 9] Fourth Defense

Defendant alleges that on the 18th of May, 1960, the Federal Reserve Bank of San Francisco appointed and designated this defendant, the First National Bank of Logan, as its agent to receive, verify, store, control, process and distribute Federal Reserve Notes and United States Currency during a National Emergency. That in order to properly function as said agent it became necessary for this defendant to provide additional vault facilities. That the plan of the branch bank of this defendant provides for such additional vault facilities. That, if a National Emergency occurs, the plaintiff will be benefited and not injured by the establishment of the branch bank of this defendant.

That if said certificate of authority of the Comptroller of the Currency is rescinded and this defendant is denied the privilege of providing adequate facilities to act as an agent of the Federal Reserve Bank in time of National Emergency, its efficiency to so act under Federal authority will be greatly impaired.

Fifth Defense

And as a further and separate defense defendant alleges that plaintiff ought not to be permitted to say that the Comptroller of Currency of the United States had no legal authority to issue to defendant, the First National Bank of Logan, a certificate of authority to establish a branch bank in Logan, Utah, for the reason that on about the 1st day of December, 1962, the National Bank Examiner gave plaintiff notice of the application of the First National Bank to establish a branch that the plaintiff bank stood by and made no protest and because of its apparent acquiescence in the issuance of authority to establish a branch bank this defendant has expended the sum of ap-

proximately $80,000 for a building site and architects fees for a branch bank building in which to conduct a branch banking business and to provide vault space to act as an agent of the Federal Reserve Bank of San Francisco in a National Emergency.

Sixth Defense

That portion of Section 7-3-6 which grants certain branch banking privileges to banks in cities of the first class but denies the same privileges to banks in other cities is con- [fol. 10] trary to the provisions of Article VI Section 26 of the Constitution of the State of Utah which provides among other matters that:

"The Legislature is prohibited from any private or special laws in the following cases:

In all cases where a general law can be applicable, no special law shall be enacted."

Wherefore this defendant prays that plaintiff's complaint be dismissed and the court award the defendants its costs in this action and for general relief.

Ted S. Perry, Attorney for Plaintiff.

In United States District Court

Answer of Comptroller of the Currency
Filed October 7, 1963

Defendant James J. Saxon, Comptroller of the Currency, by his attorneys, in answer to the complaint herein admits, denies and alleges as follows:

1. For lack of knowledge or information sufficient to form a belief, defendant denies the allegations contained in paragraph 1 of the complaint, except that he neither admits nor denies plaintiff's conclusions of law that the Comptroller of the Currency is an "agency" of the Government under 5 U.S.C. §1001 and that the action of the Comptroller complained of in this suit is a final agency

action under 5 U.S.C. §1009, and except that he admits that plaintiff is a banking corporation organized under the laws of the State of Utah, that the Comptroller of the Currency is a duly constituted officer of the Executive Branch of the Government of the United States maintaining his official residence and place of business in the District of Columbia, that the First National Bank of Logan is a national banking association organized and existing under the National Banking Act and engaged in the banking business in the City of Logan, State of Utah, that the City of Logan is a city of the second class as cities are classified by the statutes of the State of Utah, that this is a proceeding for a declaratory judgment and injunctive relief, and that there is no special statutory review proceeding relevant to the subject matter of the action.

[fol. 11] 2. For lack of knowledge or information sufficient to form a belief, defendant denies the allegations contained in paragraph 2 of the complaint.

3. Defendant admits the allegations contained in paragraph 3 of the complaint and alleges that the First National Bank of Logan applied to the Comptroller for authorization to establish a branch bank in the City of Logan, Utah on November 9, 1962.

4. Defendant denies the allegations contained in paragraph 4 of the complaint except that he admits that at the time the application was made by the defendant bank and at the time of the issuance of the certificate authorizing the defendant bank to establish and conduct a branch office in the City of Logan there were located in the City of Logan, each transacting a banking business, the following: a branch office of the Walker Bank and Trust Company, a branch office of the First Security Bank of Utah, and the home office of the First National Bank of Logan.

5. Defendant admits that the quotation from 12 U.S.C. §36(c), in paragraph 5 of the complaint is, except for the underscoring, accurate and he refers the Court to 12 U.S.C. §36 for the complete language of the section. Defendant

neither admits nor denies plaintiff's paraphrasing of 12 U.S.C. §36(c) but refers the Court to that section for the terms and provisions thereof.

6. Defendant admits that the quotation from Section 7-3-6, Utah Code Annotated, 1953, as amended, is accurate and he refers the Court to that section for its complete language. Defendant admits the remaining allegations contained in paragraph 6 of the complaint.

7. Defendant denies the allegations contained in paragraph 7 of the complaint.

Affirmative Defense

The complaint fails to state a claim upon which relief can be granted.

John W. Douglas, Assistant Attorney General, Harland F. Leathers, William T. Thurman, United State Attorney, R. Dickey Hamilton, Attorneys, Department of Justice, Attorneys for Defendant Saxon.

[fol. 12]

In United States District Court

Stipulation of Facts and Other Matters—
Filed May 4, 1964

The plaintiff and defendants by their respective counsel, hereby stipulate to the following facts in the above-entitled action as hereinafter set forth in paragraphs 1 to 9, both inclusive:

1. The plaintiff, Walker Bank & Trust Company, is and has been at the times hereinafter referred to and prior thereto, a banking corporation organized under the laws of the State of Utah, having its main banking house in Salt Lake City, Utah.

2. The defendant, James J. Saxon, Comptroller of the Currency (hereinafter referred to as the Comptroller), is a duly constituted officer of the Executive Branch of the

Government of the United States, maintaining his official residence and place of business in the District of Columbia.

3. The defendant, The First National Bank of Logan (hereinafter referred to as the Defendant Bank), is a national banking association organized and existing under the National Banking Act and regularly transacting a customary banking business in the City of Logan, State of Utah. The City of Logan is a city of the second class as cities are classified by the statutes of the State of Utah.

4. This is an action for a declaratory judgment and injunctive relief and there is no special statutory review proceeding relevant to the subject matter of the action.

5. On the 18th day of December, 1956, plaintiff took over and acquired the Cache Valley Banking Company by a statutory merger under and in accordance with the laws of the State of Utah, whereby said Cache Valley Banking Company was merged with and into plaintiff as the resulting bank. Prior to the time when plaintiff took over and acquired the Cache Valley Banking Company, said Cache Valley Banking Company was a bank organized under the laws of the State of Utah and regularly transacting a customary banking business at its banking house located at 102 North Main Street, in the City of Logan, State of Utah, and upon and following said merger plaintiff continued to transact, and is now transacting, such banking business at its branch bank in said City of Logan, which branch [fol. 13] bank, prior to the effective date of said merger, had been the banking house of Cache Valley Banking Company. Said Cache Valley Banking Company had been in operation as a bank for a period of more than five (5) years prior to the time it was taken over and acquired by plaintiff through said merger.

6. At the time of the commencement of this action: Plaintiff had demand and time deposits at its Cache Valley Branch in Logan, Utah, amounting to in excess of $10,000,000; it had outstanding loans in excess of $5,000,000 which has been made at said Cache Valley Branch; and it

had an investment in furniture, fixtures and leasehold improvements at the Cache Valley Branch in excess of $50,000.

7. On or about November 9, 1962, the Defendant Bank applied to the Comptroller for his approval of the establishment and operation of a branch bank by the Defendant Bank at 466 North Main Street, Logan, Utah, and on January 21, 1963, the Comptroller issued his certificate approving and authorizing the Defendant Bank to establish and operate a branch at the location above mentioned.

8. On January 21, 1963, the Defendant Bank commenced transacting a banking business at its said branch banking house located at 446 North Main Street, Logan, Utah, and thereafter on or about May 7, 1963, the Defendant Bank moved its branch banking house to a new location at 440½ North Main Street, Logan, Utah, and since said date, the Defendant Bank has been transacting a banking business at said banking house located at 440½ North Main Street, Logan, Utah. In seeking to establish said branch bank and in establishing the same, as hereinabove set forth, the Defendant Bank did not take over an existing bank. The Defendant Bank will continue to operate said branch bank, unless enjoined by the court from so doing.

9. Prior to the Comptroller's authorization for the establishment of said branch bank by the Defendant Bank, the Defendant Bank had no branches and it regularly transacted a customary banking business only at its banking house located at 99 North Main Street, City of Logan, Utah. At the time said application was made by said Defendant Bank to the Comptroller and at the time of the issuance of said certificate of authorization by the Comptroller and prior thereto, Walker Bank & Trust Company [fol. 14] and First Security Bank of Utah, N.A., were each regularly transacting a customary banking business at their respective branch banking houses located in said City of Logan, Utah.

10. It is further stipulated that each of the parties hereto reserves the right to offer evidence at the trial of

this case with respect to any issue of fact under the pleadings in this case which has not been resolved by the stipulation of facts hereinabove set forth, provided that:

(a) The party intending to offer such evidence shall give written notice thereof to the other parties within thirty days from the date hereof, which notice shall state the names and addresses of all witnesses such party intends to call to testify at the trial with respect to such issue of fact and a summary of the testimony of each such witness, and such notice shall be accompanied by a copy of all documents or writings which such party intends to offer in evidence at the trial with respect to such issue of fact;

(b) Within twenty days after such notice, each party receiving the same shall give notice in writing to the other parties of the names and addresses of all witnesses whom such party intends to call to testify with respect to such issue of fact, and a summary of the testimony of each such witness, and shall accompany such notice with a copy of all documents or writings which such party intends to offer in evidence at such trial with respect to such issue of fact; and

(c) Each party reserves the right to object to the materiality, relevancy or competency of such evidence, or to object to such evidence on the ground that it is not material, relevant or competent with respect to any valid legal issue in this case.

Dated this 24th day of April, 1964.

Joseph S. Jones, C. E. Henderson, Ray, Rawlins, Jones & Henderson, Attorneys for Plaintiff.

L. Tom Perry, Attorney for Defendant, The First National Bank of Logan.

William T. Thurman, United States Attorney, By .....

Walker E. Anderson, Assistant United States Attorney, Attorney for Defendant, John J. Saxon, Comptroller of the Currency.

[fol. 15]

IN UNITED STATES DISTRICT COURT

NOTICE BY THE COMPTROLLER—Filed May 22, 1964

To the parties named above and their attorneys, please take notice that with regard to the Stipulation Of Facts And Other Matters dated April 24, 1964, the Comptroller has no objection to this Stipulation, except that the Comptroller does not agree to the relevancy of the matters set out in paragraph 6, except, insofar as it goes to the $10,000.00 jurisdictional amount; and that the Comptroller may file a Motion to Dismiss, or a Motion for Summary Judgment; that paragraph 10 of the Stipulation should be amended by inserting after the word "case" in the third sentence of paragraph 10, the phrase "if this action is not adjudicated on the motion of any of the parties herein" as this amendment would negate any possible inference that by executing the Stipulation the Comptroller would not waive any rights to file such a Motion or Motions.

Dated this 22nd day of May, 1964.

William T. Thurman, United States Attorney, By Walker E. Anderson, Assistant United States Attorney, Attorney for Defendant, John J. Saxon, Comptroller of the Currency.

IN UNITED STATES DISTRICT COURT

STIPULATION AS TO JOINDER IN STIPULATION—Filed May 28, 1964

It Is Hereby Stipulated between the defendant, James J. Saxon, Comptroller of the Currency, and the plaintiff, through their respective counsel, that said defendant hereby joins in the Stipulation Of Facts And Other Matters dated April 24, 1964, made and entered into between plaintiff and the defendant, The First National Bank of

Logan, and on file herein, and plaintiff and said Comptroller hereby stipulate to the facts and other matters set forth in said Stipulation dated April 24, 1964, except that the Comptroller does not agree to the relevancy of the matters set forth in paragraph 6 of said Stipulation, except, insofar as said paragraph goes to the $10,000 jurisdictional amount; and it is further stipulated that the Comptroller may file a motion to dismiss, or a motion for summary judgment; and that paragraph 10 of said Stipu- [fol. 16] lation of Facts and Other Matters hereby is amended by inserting after the word "case" in the third sentence of paragraph 10, the phrase "if this action is not adjudicated on the motion of any of the parties herein."

Dated this 28 day of May, 1964.

William T. Thurman, United States Attorney, By Walker E. Answeron, Assistant United States Attorney, Attorney for Defendant, John J. Saxon, Comptroller of the Currency.

Ray, Rawlins, Jones & Henderson, By C. E. Henderson, Attorneys for Plaintiff.

IN UNITED STATES DISTRICT COURT

STIPULATION OF FACTS—Filed June 19, 1964

Pursuant to the Stipulation of Facts and Other Matters heretofore filed herein, dated April 24, 1964, between plaintiff and the defendant, The First Security Bank of Logan, hereinafter sometimes referred to as the "defendant bank," the defendant bank gave written notice, as provided in paragraph 10 of said Stipulation of Facts and Other Matters, of the witnesses said defendant bank intends to call to testify at the trial of this case with respect to issues of fact under the pleadings which are not resolved by the Stipulation of Facts contained in said Stipulation of Facts and Other Matters dated April 24, 1964.

In order to obviate the calling of said witnesses at the trial, the plaintiff hereby stipulates with the defendant bank that if the witnesses hereinafter named were called by the defendant bank to testify at the trial, their testimony would be in substance as hereinafter set forth. It is further stipulated however, that said proffered testimony is and shall be subject to plaintiff's objection that the same is not admissible on the grounds that such proffered testimony is immaterial, irrelevant and incompetent with respect to any issue in this case, including any valid legal issue herein.

[fol. 17] John Wanless, Jr., if called to testify as a witness at the trial of this case, would testify in substance as follows: That he resides at 2131 Lincoln Street, Salt Lake City, Utah, and is employed as a National Bank Examiner; that in the course of his investigation of the application of the defendant bank to establish a branch bank in Logan, Utah, between November 27 to November 29, 1962, inclusive, he telephoned Reed E. Holt, President of the plaintiff, in Salt Lake City, Utah, and informed Mr. Holt of the application of the defendant bank to establish a branch bank in Logan, Utah; that in so informing Mr. Holt, he was not giving any official notice of a hearing on said application as no official notice was prescribed nor required with respect to a hearing on said application for a branch bank and no hearing on said application was had nor required by law or any governmental regulation; that Mr. Holt advised him that in Mr. Holt's opinion the establishment of such branch bank by the defendant bank would be contrary to law, as the laws of the State of Utah, which govern the Comptroller's action in such cases, prohibit the establishment of such branch by the defendant bank and that the plaintiff was about to commence an action in the state courts to enjoin the establishment of a branch bank by the State Bank of Provo, in Provo, Utah, under facts identical to the situation in Logan; that he made a report of his conversation with Mr. Holt to the Comptroller of the Currency.

G. Wesley Schaub, if called to testify as a witness at the trial of this case, would testify in substance as follows: That he resides at 576 East 5th North, Logan, Utah, and is an architect engaged in the practice of architecture at 75 North Main Street, Logan, Utah; that on or about January 17, 1963, the defendant bank engaged his firm to draw plans and specifications for the remodeling of the Ace Raymond Building in Logan, Utah, located at 444 North Main Street, Logan, Utah, into a drive-in branch bank; that at said request he made plans and specifications for the remodeling of said building and submitted them to the defendant bank for their approval; that the defendant bank did not accept the plans, but on May 6, 1963, paid him the sum of $798.00 for plans for remodeling said building; that on or about May 6, 1963, he made preliminary drawings and specifications for a new drive-in branch bank at 470 North Main, Logan, Utah, and partially completed the plans, that the defendant bank paid him the sum of $400.00 on July 8, 1963 and notified him about that time to delay the completion of said plans.

[fol. 18] Ronald S. Hansen, if called to testify as a witness at the trial in this case, would testify in substance as follows: That he resides at 974 North 15th East, Logan, Utah, and is the Assistant Vice-President of the defendant bank; that on the first day of May, 1960, the Federal Reserve Bank of San Francisco appointed the defendant bank as its agent to receive, verify, store, control, process and distribute federal reserve notes and United States currency in the event of an emergency, as shown by a copy of a letter annexed hereto by the Federal Reserve Bank of San Francisco, dated May 18, 1960, to the defendant bank; that the defendant bank accepted said appointment and the same has not been cancelled or revoked; that annexed hereto are copies of Circular No. 4, Supplement 1 thereto, and Circular No. 5, referred to in said Federal Reserve Bank Letter; that after the application of the defendant bank for authority to establish a branch bank in Logan,

Utah, the defendant bank consulted Peter W. Billings, Attorney at Law, as to its right to establish a branch bank and received a written opinion from Mr. Billings, dated November 23, 1962, a copy of which is annexed hereto; that the defendant bank also consulted their own attorney, and was informed that he agreed with the opinion of Peter W. Billings and that a branch could legally be established; that on January 17, 1963, the defendant bank received a telegram from the Comptroller of the Currency of the United States, a copy of which is annexed hereto, and on January 21, 1963, the defendant bank received a certificate of approval for the establishment of a branch bank in Logan, Utah, at 446 North Main Street of said city; that on May 1, 1963, the Comptroller advised the defendant bank that the address of the authorized place of business would be changed upon being notified two weeks prior to the date the branch will open for business at the permanent location; and between May 5th and May 10th, 1963, the defendant bank purchased land for the construction of the permanent site at a neighboring location, 470 N. Main St., for the sum of $75,896.90, but withheld construction thereon by agreement with the Comptroller pending the outcome of this litigation; that said land was purchased as a building site for said branch office, but no branch office has been built thereon; that on or about February 27, 1963, the defendant bank entered into a contract with Mosler Safe Company for the purchase of a vault door, vent, night depository, safety deposit boxes and window for said branch bank, and if said contract is cancelled, Mosler Safe Company claims the sum of $3,341.00 as a settlement for the cancellation thereof; that the defendant bank has paid as rental on the premises for branch bank the sum of [fol. 19] $1,275.00; that within a day or two after plaintiff had commenced an action on November 29, 1962, in the District Court of Salt Lake County, State of Utah, against Spencer C. Taylor, Bank Commissioner of the State of Utah, and the State Bank of Provo (Civil No. 140064),

involving the validity of the establishment of a branch bank in Provo, Utah, by the State Bank of Provo, he read a newspaper report of the filing of said action and thereupon consulted the defendant bank's attorney, L. Tom Perry, to obtain his opinion as to the significance of said action with respect to said application of the defendant bank for the establishment of a branch bank in Logan; that after two or three weeks said defendant bank's attorney gave a written opinion to said defendant bank with respect to this significance of said state action, wherein, among other things, said attorney advised as follows:

"Although a judicial interpretation of our state statute will not be binding upon us when made by a state court, if an interpretation of the state statute is made by a Utah Court in an action to prevent the Provo State Bank from establishing a branch at the B.Y.U., this decision will likely be used by the Federal Court as a measuring stick in its application of the Federal law. I, therefore, await with interest the outcome of the Walker Bank vs. State Bank Commissioner."

Donald J. Melvin, if called to testify as a witness at the trial in this case, would testify in substance as follows: That he is employed in the office of the Comptroller of the Currency, Washington, D.C.; that the application of the defendant bank to establish a branch bank in Logan, Utah, was referred to him for study and he advised the Comptroller as to the legality of granting the application.

Dated June 18, 1964.

Joseph S. Jones, C. E. Henderson, Ray, Rawlins, Jones & Henderson, Attorneys for Plaintiff.

L. Tom Perry, Attorney for Defendant, The First National Bank of Logan.

[fol. 21]

CIRCULAR No. 4
February 28, 1963 (Revised)

FEDERAL RESERVE BANK
OF SAN FRANCISCO

PREPAREDNESS PROGRAM FOR
EMERGENCY OPERATIONS IN BANKING

NOTE: This circular is not effective until a national emergency has been declared

CASH OPERATIONS DURING
A NATIONAL EMERGENCY

To the Banks, Bankers, and Trust Companies
of the Twelfth Federal Reserve District.

Dear Sirs:

This circular sets forth the plans of the Federal Reserve Bank of San Francisco for emergency cash operations in the Twelfth Federal Reserve District during a national emergency. A "national emergency" is an emergency in which the United States is involved in war or which may be proclaimed by the President of the United States to be a national war emergency and in which this Federal Reserve bank puts into effect its plan for emergency operations.

In the event an attack on the United States results in certain Federal Reserve bank offices being rendered inoperative, it may not be possible to supply the currency needs of the banking system in the normal manner. Therefore, in a national emergency, banks should do everything possible to take care of their currency requirements through other channels, and the procedure outlined in this circular should be utilized only if such other channels prove inadequate.

Currency Operations to Be Decentralized

If one or more offices of this bank is rendered inoperative it may be necessary to decentralize currency operations of inoperative offices by utilizing facilities of certain commercial banks, referred to herein as "cash agent banks".

The procedure outlined in this circular becomes effective only upon receipt of notification by, or on behalf of, the Federal Reserve Bank of San Francisco that an emergency exists, and such notice will specify whether this circular is effective as to all banks in the district or only as to the banks in the areas served by certain offices of this bank, depending upon the extent of the emergency.

If one or more offices of this bank are operative, every effort will be made for such office(s) to assume operations of the inoperative office(s), and, in such circumstances, the provisions of this circular will be applicable only to banks in those areas where it becomes necessary to activate cash agent banks.

The provisions of this bank's current coin and currency circulars shall continue in effect, except as herein modified.

Relocation Offices

If no office of this bank is operative in a national emergency, limited operations of the Federal Reserve Bank of San Francisco and its branches will be conducted at relocation offices to be activated as indicated in this bank's "Preparedness Program for Emergency Operations in Banking, Circular No. 1". *Supplies of currency will not be maintained at relocation offices.*

All Banks to Be Accommodated

During a national emergency both member and nonmember banks may make use of the currency services provided for in this circular.

[fol. 21a]

DESIGNATION OF CASH AGENT BANKS

The Federal Reserve Bank of San Francisco has designated certain cities for decentralization of currency operations within the Twelfth District, and certain commercial banks or their branches in these localities have agreed to be cash agents of the Federal Reserve Bank of San Francisco and to act on its behalf.

These cash agent banks are listed in Supplement 1 to this circular together with the area which each cash agent bank will serve if called upon during a national emergency. The instructions applicable to such cash agent banks are outlined in Preparedness Program Circular No. 5.

ALTERNATE CASH AGENTS

If an attack on the United States renders certain cash agent banks inoperative, this bank will, as soon as possible, either arrange for operative cash agent banks to service the emergency cash areas concerned or enter into agreements with alternate cash agents. This bank will endeavor to notify all concerned promptly of any changes in cash agent banks.

EXTENT OF SERVICE BY CASH AGENT BANKS

Cash agent banks will accept deposits of currency from member banks for credit to their reserve accounts and from nonmember clearing banks for credit to their nonmember clearing accounts. A nonmember bank which does not maintain an account with an office of this bank should designate a member bank whose account is to be credited for currency deposits.

Cash agent banks will make shipments of currency to member and nonmember banks in accordance with the provisions of existing circulars governing shipments by this bank, except as they may be modified hereby.

Every effort will be made by cash agent banks to supply banks with currency in such amounts, denominations, and degree of fitness as may be possible under the prevailing conditions. Because of shortages in the currency supply or because of transportation difficulties, it may be necessary for cash agent banks to institute a rationing program, to defer shipments, or to substitute other denominations of currency for those specified in the order of the requisitioning bank. No provision is made for cash agent banks to supply coin.

Shipments From Cash Agent Banks

In a national emergency, specimen signatures of those authorized to act on behalf of each bank in an emergency cash area should be furnished promptly to the cash agent bank for that area. Banks should request shipments of currency from cash agent banks only in cases of actual need. Requests directed to the cash agent banks should be made by mail, telegraph with approved A.B.C. testword, or such other means of communication as may be available. In exceptional circumstances, shipments will be made by cash agent banks on telephonic requests if the need is urgent and the authenticity of the requests can be established. In such instances, confirmation bearing authorized signature(s) should be forwarded to the cash agent bank immediately.

A member bank or a nonmember clearing bank should authorize a charge to its account for the amount of the shipment. A bank which does not maintain an account with this bank may make payment by a member bank draft drawn on this bank or by arranging with a member bank to authorize a charge to its account for the shipment.

Currency received from cash agent banks should be verified and acknowledged immediately upon receipt. Any discrepancies in shipments received should be immediately reported to the cash agent bank supported by the strap

of the discrepant package to enable the cash agent bank to effect an appropriate adjustment.

Cash agent banks will, at the expense of this bank, make currency shipments to participating banks by registered mail, express, armored car, or by such other means of [fol. 21b] transportation as may be deemed by the cash agent bank to be reasonably safe and proper in view of the circumstances.

SHIPMENTS TO CASH AGENT BANKS

Banks should forward surplus stocks of currency to cash agent banks for credit to the forwarding bank's account with this bank or for credit to the account of the forwarding bank with a correspondent member bank. When making deposits of currency with cash agent banks, member banks should continue to follow the instructions outlined in this bank's Circular 14 insofar as the same may be applicable and should forward a separate mail advice of shipment to the cash agent bank. Similarly, nonmember banks should make such deposits in accordance with the provisions of this bank's circular letter on "Coin and Currency" addressed to such banks.

Any bank shipping currency to any cash agent bank for the account of this bank shall by such action be deemed to have agreed that all such shipments shall be prepared and verified by one or more responsible employees of the sender and that the sealed package shall be in charge of a responsible person until deposited and registered at the post office, or delivered for shipment by means of transportation selected or approved by this bank or a cash agent bank and that the contents of all packages shall be enclosed in a strong wrapper, envelope, or cloth or canvas bag, well secured, and sealed in a manner acceptable to the post office, or the other approved means of transportation at the place of mailing or dispatch.

Banks should make shipments of surplus currency to cash agent banks by registered mail, express, armored car, or by such other means of transportation as may be approved by this bank or the cash agent bank. When forwarding shipments of currency during an emergency, banks should recognize that greater risks, not only of destruction but also of theft, may be involved than under normal circumstances, and every effort should be made to insure that maximum protective measures are taken. Reimbursement of shipping costs will be made by this bank.

Banks in the same geographical area are urged to exchange currency with other banks whenever possible to avoid unnecessary shipments.

ASSUMPTION OF RISK

During a national emergency, notwithstanding the assumption of risk provisions of this bank's Circular 14 addressed to member banks and its circular letter addressed to nonmember banks on the same subject, any bank (member or nonmember) shipping or causing or ordering shipments of currency to, from, or for the account of this bank or any cash agent bank shall by such action be deemed to have agreed to the following terms and conditions with respect to such shipments:

> Subject to the terms of this circular, this bank will assume all risks incident to the transportation of such shipments of currency (a) by registered mail, and (b) by such other means of transportation as may be selected or approved by this bank or its cash agent bank, from the time such shipments leave the office of the sending bank until delivered at the office of the addressee bank, as enumerated below.
>
> Such risks hereby assumed shall include, but not be limited to, any loss resulting from hostile or warlike action by any military, naval, air forces, or agents of domestic, foreign or revolutionary governments,

powers, or forces, whether or not war has been formally declared and including defending against an actual or expected attack; or any loss caused by any weapon of war employing atomic fission or radioactive force.

This bank, however, will not assume any risk (other than the war and nuclear reaction risks described in the preceding paragraph) for shipments sent by Railway Express Agency, Inc., while such shipments are in the custody of the Railway Express Agency, Inc., as the rate charged by the express company on such shipments is based on the declared value and the ordinary risks of loss are assumed by the express company under its shipping contract.

[fol. 21c] EXCEPTIONS

This bank will not assume any risks of loss in any of the following circumstances, and any loss thereunder is agreed and understood to be assumed by the bank shipping or causing or ordering such shipments:

(1) Any loss in excess of $2,000,000 on all shipments by any one banking office to this bank and to its cash agent banks on any one day.

(2) Any loss resulting from any dishonest, fraudulent, or criminal act of any employee of any bank, other than this bank or its cash agent banks, shipping, causing, ordering, or receiving the shipment.

(3) Any loss to the extent recoverable from any insurance, surety or indemnity company pursuant to purchased insurance, surety or indemnity (including bankers' blanket bond), whether primary or excess, carried by or maintained by any person other than this bank or its cash agent banks.

(4) Any loss on any shipment by any bank, other than a Federal Reserve bank or a cash agent bank, not made in conformity with the provisions of this circular.

Emergency Terms and Conditions

Banks forwarding currency to or requisitioning currency from a cash agent bank, will by such act be understood to have agreed to the terms and conditions of this circular and to any applicable regulations of the Board of Governors of the Federal Reserve System, and as they may be amended.

Disposition of Money in Possession of Armored Car Carrier During an Attack

This bank's plan for distribution of money in a national war emergency provides for disposition of money en route to, from, or for the account of this bank by armored car during an attack. It is provided that, if disposition is not feasible under certain other described circumstances, then the money shall be delivered by the armored car representative to the most accessible and operable commercial bank to be held in custody by such bank as agent for this bank, pending further instructions from this bank, its "Cash Agent bank", another Federal Reserve bank, or the Board of Governors of the Federal Reserve System. Commercial banks in the Twelfth Federal Reserve District are authorized so to act as this bank's agent under the above circumstances. This bank will reimburse such bank for all expenses properly incurred by it as such agent and will indemnify it against all hazards except loss due to the agent's failure to maintain its customary security measures in the protection of the money insofar as possible under the conditions then existing.

This bank hereby agrees with the armored carrier of shipments of currency or coin, which during an attack are in transit by armored car to, from, or for the account of this bank, that the armored carrier will be deemed to have completely discharged and satisfied all of its responsibility for the safe handling and delivery of such shipments by delivery thereof to and acceptance thereof by the first operable and

accessible receiving commercial bank to which such delivery is tendered and accepted in the following order:

1. The original consignee bank;
2. An operable and accessible branch of the original commercial bank consignee;
3. Any other commercial bank as instructed by this bank;
4. This bank's closest operable and accessible cash agent bank;
5. The most accessible and operable commercial bank.

The right is reserved to withdraw, add to, or amend at any time, any of the provisions of this circular.

Yours very truly,

FEDERAL RESERVE BANK OF
SAN FRANCISCO

By /s/ ELIOT J. SWAN
President.

NOTE: This supplement is not effective until a national emergency has been declared.

DESIGNATED CASH AGENT BANKS AND AREAS TO BE SERVED

HEAD OFFICE ZONE

Emergency Cash Area	Name and Location of Cash Agent Bank	Counties to be Served
SF 1	Fresno Office Crocker-Anglo National Bank Fresno, California	California Fresno, Kings, Madera, Mariposa, Merced, Tulare
SF 2	Redding Office Crocker-Anglo National Bank Redding, California	California Alpine, Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou, Tehama, Trinity
SF 3	Santa Rosa Office The Bank of California, N.A. Santa Rosa, California	California Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Sonoma
SF 4	Stockton Main Office Wells Fargo Bank American Trust Company Stockton, California	California Alameda, Amador, Calaveras, Colusa, Contra Costa, El Dorado, Nevada, Placer, Sacramento, San Joaquin, Sierra, Solano, Stanislaus, Sutter, Tuolumne, Yolo, Yuba
SF 5	Head Office Nevada Bank of Commerce Reno, Nevada	Nevada Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Ormsby, Pershing, Storey, Washoe

LOS ANGELES BRANCH ZONE

LA 1	Flagstaff Office First National Bank of Arizona, Phoenix Flagstaff, Arizona	Arizona Apache, Coconino, Mojave, Navajo, Nevada Clark
LA 2	Home Office The Valley National Bank of Phoenix Phoenix, Arizona	Arizona Gila, Maricopa, Pinal, Yavapai, Yuma
LA 3	Bakersfield Main Office Bank of America N.T. & S.A. Bakersfield, California	California Inyo, Kern, Los Angeles, Mono, Orange
LA 4	El Centro Branch Bank of America N.T. & S.A. El Centro, California	California Imperial, Riverside, San Bernardino, San Diego
LA 5	Santa Barbara Main Office Crocker-Anglo National Bank Santa Barbara, California	California San Luis Obispo, Santa Barbara, Ventura

PORTLAND BRANCH ZONE

Emergency Cash Area	Name and Location of Cash Agent Bank	Counties to be Served
PO 1	Coeur d'Alene Office The Idaho First National Bank Coeur d'Alene, Idaho	Idaho Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone
PO 2	Baker Branch The United States National Bank of Portland Baker, Oregon	Oregon Baker, Grant, Malheur
PO 3	Bend Branch The First National Bank of Oregon, Portland Bend, Oregon	Oregon Crook, Deschutes, Harney, Jefferson
PO 4	Coos Bay Branch The First National Bank of Oregon, Portland Coos Bay, Oregon	Oregon Coos, Douglas
PO 5	Eugene Main Branch The First National Bank of Oregon, Portland Eugene, Oregon	Oregon Benton, Lane
PO 6	Medford Branch The First National Bank of Oregon, Portland Medford, Oregon	Oregon Curry, Jackson, Josephine, Klamath, Lake
PO 7	Pendleton Branch The United States National Bank of Portland Pendleton, Oregon	Oregon Gilliam, Hood River, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler
PO 8	Ladd & Bush—Salem Branch The United States National Bank of Portland Salem, Oregon	Oregon Clackamas, Clatsop, Columbia, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill
PO 9	Longview Branch Seattle-First National Bank Longview, Washington	Washington Clark, Cowlitz, Klickitat, Pacific (Ilwaco), Skamania, Wahkiakum
PO 10	Head Office The Baker-Boyer National Bank of Walla Walla Walla Walla, Washington	Washington Asotin, Columbia, Garfield, Walla Walla

[fol. 23a]

SALT LAKE CITY BRANCH ZONE

Emergency Cash Area	Name and Location of Cash Agent Bank	Counties to be Served
SL 1	Head Office First Security Bank of Idaho, N.A. Boise, Idaho	Idaho Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley, Washington
SL 2	Pocatello Office First Security Bank of Idaho, N.A. Pocatello, Idaho	Idaho Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, Teton
SL 3	Head Office Twin Falls Bank & Trust Company Twin Falls, Idaho	Idaho Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls
SL 4	Elko Branch Nevada Bank of Commerce Elko, Nevada	Nevada Elko, Lincoln, White Pine
SL 5	The First National Bank of Logan Logan, Utah	Utah Box Elder, Cache, Davis, Morgan, Rich, Weber
SL 6	Farmers & Merchants Branch Walker Bank & Trust Company Provo, Utah	Utah Beaver, Carbon, Daggett, Duchesne, Grand, Iron, Juab, Millard, Salt Lake, San Juan, Summit, Tooele, Uintah, Utah, Wasatch, Washington
SL 7	First State Bank of Salina Salina, Utah	Utah Emery, Garfield, Kane, Piute, Sanpete, Sevier, Wayne

[fol. 23b]

SEATTLE BRANCH ZONE

SE 1	Bellingham Branch Seattle-First National Bank Bellingham, Washington	Washington Island, San Juan, Skagit, Snohomish, Whatcom
SE 2	Olympia Branch The National Bank of Commerce of Seattle Olympia, Washington	Washington Clallam, Grays Harbor, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, Thurston
SE 3	Columbia Valley Branch The National Bank of Commerce of Seattle Wenatchee, Washington	Washington Adams, Chelan, Douglas, Ferry, Grant, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Whitman
SE 4	Yakima Valley Branch Seattle-First National Bank Yakima, Washington	Washington Benton, Franklin, Kittitas, Yakima

[fol. 25]

IN THE UNITED STATES DISTRICT COURT

AMENDMENT TO ANSWER OF DEFENDANT FIRST NATIONAL BANK OF LOGAN—Filed July 6, 1964

Comes now the Defendant, The First National Bank of Logan, and having obtained the consent of the Plaintiff in writing pursuant to Rule 15 (a) amends its answer as follows:

1. The Sixth Defense as stated in said answer is amended to read as follows:

Sixth Defense

That portion of Section 7-3-6, Utah Code Annotated, 1953, which grants certain branch banking privileges to banks in other cities is contrary to the provisions of Amendments V and XIV of the Constitution of the United States, Sections 2 and 7 of Article I and Section 26 of Article VI of the Constitution of the State of Utah.

2. A Seventh Defense is added to said answer which reads as follows:

Seventh Defense

Under the interpretation of the Utah Supreme Court in Walker Bank & Trust Company v. Taylor, —— Utah ——, 390 P2d 592, dated after the filing of defendant's answer, the first sentence of the fourth paragraph of Section 7-3-6, Utah Code Annotated, 1953 which provides:

Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business unless the bank

seeking to establish such branch shall take over an existing bank.

is invalid, unconstitutional and contrary to the provisions of Amendments V and XIV of the Constitution of the United States, Sections 2 and 7 of Article I, and Section 26 of Article VI of the Constitution of the State of Utah.

Dated this 6th day of July, 1964.

L. Tom Perry, Attorney for the Defendant First National Bank of Logan.

[fol. 26]

IN UNITED STATES DISTRICT COURT

STIPULATION RE SUBMISSION AND FILING OF BRIEFS—Filed July 9, 1964

It is hereby stipulated by the parties in the above entitled action through their respective counsel, as follows:

The case is hereby submitted to the court for its decision on the merits upon the facts stipulated to by the parties and set forth in the Stipulation of Facts and Other Matters, dated April 24, 1964 and filed herein, and the Stipulation between plaintiff and the defendant, The First National Bank of Logan, dated June 18, 1964, and filed herein, with respect to said defendant's proffered testimony of certain witnesses as set forth in said stipulation, which is subject, however, to plaintiff's objection that the same is not admissible on the grounds that it is immaterial, irrelevant and incompetent with respect to any issue in this case, including any valid legal issue herein.

Within 15 days from the date hereof, counsel for the respective parties will exchange memoranda of points and authorities and counsel may, within 30 day from the date hereof, exchange reply memoranda, and if the court de-

sires, counsel will present oral arguments at a hearing therefor set by the court.

Dated this 30 day of June, 1964.

Joseph S. Jones, C. E. Henderson, Ray, Rawlins, Jones & Henderson, Attorneys for Plaintiff;

L. Tom Perry, Attorney for Defendant, The First National Bank of Logan;

William T. Thurman, United States Attorney, By Walker E. Anderson, Assistant United States Attorney, attorney for defendant, John J. Saxon, Comptroller of the Currency.

Approved—

To be set for oral argument on final submission for first Rule Day in Ogden in Sept. 1964 ASC 7-9-64

[fol. 27]

IN UNITED STATES DISTRICT COURT

MINUTE ENTRY SEPTEMBER 15, 1964—
DENYING MOTIONS TO DISMISS

This matter regularly came before the court, Northern Division, Ogden, Utah, at 10:00 a.m. for oral argument on final submission.

C. E. Henderson, Esquire, Joseph S. Jones, Esquire, and James Freed, Esquire, appeared for the plaintiff. L. Tom Perry, Esquire, and Theodore S. Perry, Esquire, appeared for the First National Bank of Logan; Walker E. Anderson, Esquire, Assistant United States Attorney, appeared for James J. Saxon, Comptroller of the Currency.

Motion of counsel for the First National Bank of Logan to dismiss was denied. Motion of counsel for the Comptroller for reconsideration of the motion to dismiss was also denied.

Arguments of counsel were heard.

The court took the matter under advisement.

In United States District Court

Memorandum Decision—September 30, 1964

This is a declaratory judgment proceeding to test the power of the Comptroller of the Currency to authorize the establishment by a national banking association of a branch bank in a city in which it is situated, where conditions under which State banks are expressly authorized to establish new branches cannot now be met for practical reasons. This question, involving a construction of Section 36 (c)(1) of the National Banking Act, appears to be of novel impression. The published decisions of the Federal courts involve primarily subdivision (2) of the same subsection.[1]

[fol. 28] On or about November 9, 1962, the defendant, The First National Bank of Logan, applied to the Comptroller of the Currency for authority to establish a branch bank in the City of Logan, Utah, which is a city of the second class. The defendant bank did not take over an existing bank and, indeed, could not because it was the only bank, other than branches, situated in Logan.

Prior to the Comptroller's authorization for the establishment of a branch by the defendant bank, it had no branch. The plaintiff, Walker Bank & Trust Company, was regu-

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[1] 12 U.S.C. §36(c)

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the same time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks . . ."

larly conducting a customary banking business in Logan through its branch, which it had acquired by statutory merger of Cache Valley Banking Company, a State bank theretofore operating as a unit bank in that city. First Security Bank of Utah, N.A., not a party to this proceeding, also had a branch in Logan. On January 21, 1963, the Comptroller issued his certificate authorizing the defendant to establish and operate a branch in Logan and on that date the latter commenced regularly to transact customary banking business at this branch. Unless precluded from so doing by judgment of this court, it is clear that the defendant bank will continue to operate this branch.

As will be seen from the text in the margin, within the limits of the city, town or village in which a national association is situated, the Comptroller of the Treasury by virtue of subsection (1) of Section 36(c) may authorize the establishment of branches by a national banking association expressly authorized at the time to State banks by State law. With respect to points outside of such municipalities in which the association in question may be situated, subdivision (2) of subsection (c) authorizes the establishment of branches by the national banking association if at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or [fol. 29] recognition, and subject to the restrictions as to location imposed by State law on State banks. The laws of the State of Utah authorize the establishment by a State bank of a branch only if it takes over another existing branch.[2] It has been authoritatively determined that where,

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[2] Section 7-3-6 Utah Code Annotated, 1953, insofar as material, provides:

"... With the consent of the bank commissioner any bank having a paid-in capital and surplus of not less than $60,000 may establish and operate one branch for the transaction of its business; provided, that for each additional branch established there shall be paid in an additional $60,000 (capital and surplus).

(continued on following page)

as in Logan, there is only one unit bank, as distinguished from branches, that bank, if it were a State bank, could not establish a branch because there would be no other bank for it to acquire to satisfy the condition imposed by State law.[3] [fol. 30] The defendant Bank argues that by reason of the incorporation of State law in Section 36(c) of the National Banking Act the Comptroller must follow the State law and its construction by the State Supreme Court in acting upon applications for branches of national banks;[4] that the Utah law prohibits the establishment of a branch bank by

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"All banking houses and branches shall be located either within the corporate limits of a city or town, or within unincorporated areas of a county in which a city of the first class is located.

"Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank . . ."

(As amended by Laws of Utah 1957, and 1963. The later amendment, following the authorization here in question, eliminated the necessity of approval of the State branch by the Governor.)

[3] See Walker Bank & Trust Company v. Taylor, 15 $Utah_2$ 234, 390 P_2 592 (1964), in which it is said, p. 595: "It necessarily follows that State Bank of Provo cannot establish a branch within that city because there is no other existing unit bank [although there were branches of two outside banks as in Logan] which it could take over. Possibly, this might seem unreasonable but it cannot be deemed absurd . . ."

[4] Citing National Bank of Detroit v. Wayne Oakland Bank, 6th Cir., 252 F_2 537 (1958), cert. den. 358 U.S. 830 (1958); Commercial State Bank of Roseville v. Gidney, D.C.D.C., 174 F. Supp. 770 (1959), aff'd, per curiam, 278 F_2 871 (1960); Suburban Trust Company v. National Bank of Westfield, D.C.D.N.J. 211 F. Supp. 694 (1962), and 222 F. Supp. 269 (1963); State of South Dakota v. National Bank of South Dakota, D.C.S.D.S.D., 219 F. Supp. 842 (1963).

any other bank under the existing conditions,[5] and that the establishment and operation of a new branch, therefore, are not "at the time expressly authorized to State banks by the law of the State in question."[6] The defendants maintain [fol. 31] that under the laws of the State of Utah a State bank can establish a branch within the city of its main office by acquiring an existing bank and thus State banks are authorized to have branches in such city within the contemplation of 36(c)(1), and that, accordingly, national banking associations may be authorized by the Comptroller to have branches in such cities in which they are situated upon such conditions as may be provided by the Federal law and the regulations of the Comptroller. The Comptroller further contends that even with respect to a national banking association seeking to establish a branch outside of city, town or village in which it is situated, the only condition of State law with which there would have to be compliance under 36(c)(2) would be with respect to "location."[7]

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[5] Walker Bank & Trust Company v. Taylor, 15 $Utah_2$ 234, 390 P_2 592, supra.

[6] The plaintiff on the latter point quotes from National Bank of Detroit v. Wayne Oakland Bank, 252 F_2 537, 540, supra: "The history of federal legislation regarding branch banking and the statutes applying thereto leave a clear and definite impression that Congress intended, with respect to the location of branches, that a national bank should have no greater rights than it would if it were a state bank"; from Commercial State Bank of Roseville v. Gidney, 174 F. Supp. 770, 774, supra: "Congress has adopted state law on the establishment of branches by state banks as the measuring stick for the establishment of branches by national banks"; and from State of South Dakota v. National Bank of South Dakota, S.D.S.D., 219 F. Supp. 842, at 846, supra, that: "state law is adopted by the federal government and made the measuring stick by which it is determined whether national banks may establish branches."

[7] It is unnecessary to pass upon the last mentioned contention except as it may throw light upon the proper interpretation of subdivision (1) of subsection (c).

It is my opinion that under the laws of the State of Utah as declared by Section 7-3-6, Utah Code Annotated, 1953, and interpreted by Walker Bank & Trust Company v. Taylor, 390 P_2, 592, supra, the establishment and operation of new branches within the limits of the city, town or village in which a State bank is situated, are "expressly authorized" to State banks within the contemplation of Section 36(c)(1), Title 12 U.S.C., and that therefore the Comptroller had power to authorize the establishment of a branch by the defendant National Banking Association in the City of Logan. My reasons are these:

It is an undeniable fact that there is "express authority" under the laws of the State of Utah for State banks to establish branches in the City of Logan.[8] The plain meaning of [fol. 32] subdivision (1) of 12 U.S.C. 36(c), and the contrasting provisions of subdivision (2), applicable to other situations, reinforce this construction.[9] There is a presumption that Congress did not intend the provisions of subdivision (1) to be superfluous or to make the provisions of subdivision (2) applicable to the situation covered by sub-

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[8] The first sentence quoted from the State statute in footnote 2 is general express authority for the establishment of branches by State banks. That there are conditions for such establishment, including the consent of the bank commissioner, capitalization requirements and, in certain cities and under specified conditions, the acquisition of another bank, does not change the "express authority" into a lack of authority on the part of State banks or a lack of a statutory expression of such authority, and does not add to the Federal statute a requirement that compliance be made by National banks with all State conditions.

[9] Subdivision (1) refers only to the condition "if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question;" while subdivision (2) adds, among other things, the additional qualification that such establishment of branches by national banking associations shall be "subject to the restrictions as to location imposed by the law of the State on State banks . . ."

division (1).[10] The legislative history of the 1927 amendment incorporating subdivision (1) in the National Banking Act, in contrast to the legislative history of the new provision incorporated by the 1933 amendment and now set out in subdivision (2) is persuasive that Congress did not intend to apply the same conditions.[11] The decisions relied

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[10] "A statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another unless the provision is the result of obvious mistake or error." 2 Sutherland Statutory Construction, 3rd, §4705, p. 339 (1943).

[11] Prior to approval of the Act of Feb. 25, 1927, the Comptroller of the Currency had issued a number of permits to national banks authorizing the establishment by them of additional offices in the same city in which the banks were located. These permits were issued under authority of the National Bank Act as construed by the Attorney General in opinions rendered May 1, 1911, and October 2, 1923, respectively. No permit was issued to any national bank located in a State "where State banks were not permitted to operate branches." Instructions for the Comptroller of the Currency, at p. 518 (1928) [Doc. No. FR 1-12:914-927].

In Senate Report No. 473, 69th Cong., 1st Sess. [Serial Set. 8524], p. 8 concerning the proposed amendment to the National Bank Act upon which subdivision (1) later was based (Act of Feb. 25, 1927), it is stated: "Your Committee is in agreement with the fundamental branch banking policy of the House bill by which branch banking in the future would, in the Federal Reserve system be restricted to the confines or the limits of the city in which the parent bank is situated." When Congressman McFadden submitted H.R. 2, which ultimately became the predecessor of 12 U.S.C. §36(c)(1), to the whole House, he stated that the branch banking policy of the Bill was to: "* * * confine all branch banking within the national banking system to city limits and to prohibit national banks from establishing any branches in States which prohibit State banks from exercising this power. H.R. Rep. No. 83, 69th Cong., 1st Sess. 4 (1926)." And in its report to the Senate the Senate Committee on Banking and Currency stated that: "Under the House bill national banks would be permitted to keep the branches they now have, branch banking would be permitted for national banks in cities * * * where State banks can have branches, and national banks would be denied the right to have branches at all in any State which denied to State banks the right to have branches. * * *". S. Rept. 473, 69th Cong., 1st Sess. 10.

(continued on following page)

[fol. 33] upon by plaintiff (see footnote 4) to emphasize the controlling effect of the conditions specified by State law are constructions of subdivision (2) and no decision involv-[fol. 34] ing an interpretation of subdivision (1) has been cited. The limiting construction urged by plaintiff does not appear in harmony with the essential character of the national banking system and its supervision by the Comptroller of the Currency, as in principle it would subject national banks to State regulation where Congress has not so provided.[12] The administrative interpretation of the Act by the Comptroller since 1927 has uniformly supported the position sought to be sustained by defendant, and his ruling as evidenced by the certificate in question also is entitled to weight, even though not binding upon the court.[13]

This limitation was applicable until by the Act of June 16, 1933, Congress added subdivision (2) to Section 36(c) providing for branching by national banks outside of villages, towns and cities where they were situated. As might be expected in such a departure from the long existing federal policy of limiting branches of national banks to the cities where the parent banks were situated, a previous fundamental policy, the branches located outside such cities had to comply with additional conditions, particularly with any State limitations as to location. It seems to me that the legislative history of the 1933 amendment makes clear the distinction between the requirements of the two subsections.

[12] See Rushton v. Michigan Nat. Bank, 298 Mich. 417, 299 N.W. 129, 134 (1941); cf. State of South Dakota v. National Bank of South Dakota, D.C.S.D., 219 F. Supp. 842 (1963), supra. National banks exist wholly by virtue of Federal law. Davis v. Elmira Sav. Bank, 161 U.S. 275, 16 S. Ct. 502, 40 L. Ed. 700 (1896). "National banks are quasi-public institutions, and for the purpose for which they are instituted are national in their character, and, within constitutional limits, are subject to the control of Congress, and are not to be interfered with by state legislative or judicial action, except so far as the lawmaking power of the government may permit." Van Reed v. People's Nat. Bank, 198 U.S. 554, 25 S. Ct. 775, 776, 49 L. Ed. 1161 (1905). See also Mercantile Nat. Bank v. Langdeau, 371 U.S. 555, 83 S. Ct. 520, 9 L. Ed.$_2$ 523 (1963).

[13] Skidmore v. Swift & Co., 323 U.S. 134, 65 S. Ct. 161, 89 L. Ed. 124 (1944).

The legislative history of branch banking in the State of Utah demonstrates the distinction between the prohibition or non-expression of policy as to branch banking, on the one hand, and the granting of express authority for branch banking, conditionally or unconditionally, on the other.[14] While it is unnecessary at this time to pass upon the [fol. 35] broader argument of the Comptroller that even under subdivision (2) State statutory conditions as to "location" are the only ones applicable to the establishment of branches of national banks, it seems rather apparent that subdivision (1), containing no such limitation, should not be interpreted even more restrictively.

Finally, it would be especially incongruous in view of all of these considerations, to hold that while the plaintiff State bank, heretofore expressly authorized under subsisting State law, continues to carry on branch banking in Logan City, a national bank situated in the same city could not be authorized by the Comptroller to conduct a branch banking business there.

In view of the foregoing ruling it is not necessary to pass upon the contentions of the defendant bank that as a mere competitor the plaintiff has no standing to bring this suit; that under the particular circumstances of this case plaintiff is estopped from questioning the maintenance of defendant's branch in Logan, and that the State statute as restrictively

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[14] Thus, in Walker Bank & Trust Company v. Taylor, 390 P_2 592, at 594, supra, the Utah Supreme Court among other things said: ". . . The legislative history of branch banking is of great significance. In 1911, the legislature enacted a statute which absolutely prohibited branch banking. It was not until 1933 that the legislature relaxed this prohibition and permitted branching under certain conditions and circumstances. During the period between 1911 and 1933 the legislature evidently was of the opinion that branch banking was not in the public interest, possibly because it might impair the stability of the existing banks. This reasoning could well have influenced the lawmakers when they saw fit to allow branch banking, but only under certain restrictive conditions. This legislative history lends support to the proposition that what our branch banking laws do not permit they prohibit."

interpreted in Walker Bank & Trust Company v. Taylor, 390 P_2, 592, supra, violates the Constitutions of the United States and the State of Utah. And of course it is not the province of the court to review the exercise of the Comptroller's discretion acting, as he did, within his statutory powers.

A form of declaratory judgment in harmony with the views herein expressed adjudging that the Comptroller acted within his authority in authorizing the establishment and operation of the branch in question and dismissing plaintiff's complaint, with costs to the defendants, may be served and submitted by counsel for the defendants.

Dated this 30th day of September, 1964.

A. Sherman Christensen, United States District Judge.

[fol. 36]

IN UNITED STATES DISTRICT COURT

WALKER BANK & TRUST COMPANY,

VS.

SAXON ET AL.

JUDGMENT—October 9, 1964

The above-entitled case came on regularly before the Court on September 15, 1964 for hearing oral arguments on final submission. Joseph S. Jones, Esq., C. E. Henderson, Esq., and James Freed, Esq., were present representing the plaintiff; Walker E. Anderson, Assistant United States Attorney for the District of Utah was present representing defendant, James J. Saxon, Comptroller of the Currency; L. Tom Perry, Esq., and Theodore S. Perry, Esq., were present representing defendant, The First National Bank of Logan. Based upon the pleadings and stipulations on

file and after oral arguments the case was submitted to the Court and the Court took the matter under advisement. On September 30, 1964, the Court entered and filed with the Clerk a Memorandum Decision. For the reasons stated in the Memorandum Decision it is therefore,

Ordered, Adjudged And Decreed:

1. That James J. Saxon, Comptroller of the Currency, acted within his authority in authorizing the establishment and operation of a branch bank in the City of Logan, Utah, by The First National Bank of Logan, of Logan, Utah, A National Banking Association.

2. That plaintiff's Complaint and action are hereby dismissed.

Dated, October 9th, 1964.

By the Court, A. Sherman Christensen, Judge.

Entered Oct. 19, 1964.

IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed November 4, 1964

Notice is hereby given that Walker Bank & Trust Company, plaintiff above named, hereby appeals to the United States Court of Appeals for the Tenth Circuit from the final judgment entered in this action on October 19, 1964.

Dated: November 4, 1964.

Joseph S. Jones, C. E. Henderson of Ray, Rawlins, Jones & Henderson, Attorneys for Appellant, Walker Bank & Trust Company.

[fol. 37] [A bond on appeal in the sum of $250.00 was filed on the 4th day of November, 1964.]

IN UNITED STATES DISTRICT COURT

STATEMENT OF POINTS—Filed November 5, 1964

The points upon which plaintiff-appellant will rely on appeal are:

1. The court erred in entering judgment in the above-entitled cause wherein it is ordered, adjudged and decreed that defendant-appellee James J. Saxon, Comptroller of the Currency, acted within his authority in authorizing the establishment and operation of a branch bank in the City of Logan, Utah, by the defendent-appellee. The First National Bank of Logan, of Logan, Utah, a national banking association.

2. The court erred in entering judgment dismissing plaintiff-appellant's complaint and action and in not entering a declaratory judgment and granting injunctive relief as prayed for in the complaint of plaintiff-appellant.

Dated November 5, 1964.

Joseph S. Jones, C. E. Henderson of Ray, Rawlins, Jones & Henderson, Attorneys for Appellant, Walker Bank & Trust Company.

Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 38a] Caption (omitted in printing).

[fol. 39]

IN THE UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

MINUTE ENTRY OF ARGUMENT AND SUBMISSION—
August 17, 1965

Before Honorable Orie L. Phillips, Honorable John C. Pickett and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard and was argued by counsel, Joseph S. Jones, Esquire, appearing for appellant, David L. Rose, Esquire, and Ted S. Perry, Esquire, appearing for appellees.

Thereupon this cause was submitted to the court.

[fol. 40]

IN THE UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

September Term, 1965

Number 7981

WALKER BANK & TRUST COMPANY, a corporation, Appellant,

vs.

JAMES J. SAXON, Comptroller of the Currency; and THE FIRST NATIONAL BANK OF LOGAN, of Logan, Utah, a National banking association, Appellees.

OPINION—October 26, 1965

Appeal from the United States District Court for the District of Utah, Central Division.

Joseph S. Jones (C. E. Henderson and Ray, Rawlins, Jones & Henderson on the brief) for Appellant;

[File endorsement omitted]

David L. Rose, Attorney, Dept. of Justice, (John W. Douglas, Ass't. Attorney General, William T. Thurman, U. S. Attorney and Kathryn H. Baldwin, Attorney, Dept. of Justice on the brief) for Appellee James J. Saxon, Comptroller of the Currency.

Ted S. Perry of Perry & Perry for Appellee, The First National Bank;

Brief filed by James F. Bell for Amicus Curiae.[1]

Before Phillips, Pickett and Hill, United States Circuit Judges.

HILL, Circuit Judge.

[fol. 41] Appellant, Walker Bank and Trust Company, brought this action in the court below against appellees, the Comptroller of the Currency and The First National Bank of Logan, to obtain a declaratory judgment decreeing the action of the Comptroller, in authorizing The First National Bank of Logan to establish and operate a branch bank in Logan, to be void and of no legal effect.

Both defendants, by separate answers, alleged the validity of the questioned action of the Comptroller and the defendant bank, in addition, raised the affirmative defenses of (1) lack of standing to sue on the part of the plaintiff, (2) estoppel, and (3) that the Utah statute governing the establishment of branch banks is unconstitutional. The trial court, by memorandum opinion, held that the action of the Comptroller was valid and therefore found it unnecessary to pass on any of the affirmative defenses raised. Appellant appealed from that decision.

The facts pertinent to this appeal may be briefly stated. Appellant is a banking corporation organized under the laws of Utah, with its main bank located in Salt Lake City and with a branch bank located in Logan. Appellee, The First National Bank of Logan, is a banking corporation

[1] Leave was granted to the National Association of Supervisors of State Banks to file a brief in the case as amicus curiae.

organized under the National Banking Act maintaining its principal bank in Logan, a city of the second class. [fol. 42] On January 21, 1963, the appellee, Comptroller of the Currency, after application, issued a certificate to The First National Bank of Logan, authorizing it to establish and maintain a new and separate branch bank in Logan in addition to its main bank. Our sole question pertains to the authority of the Comptroller to issue such certificate.

We must first look to the Federal and State statutes pertinent to our question. The beginning point is 12 U.S.C. § 36(c), as amended, part of which provides:

> "(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town, or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; * * *."

(c)(2) of § 36 is set forth below[2] and covers specifically so-called "outside branches", that is branches outside the city of the parent bank. Since our facts disclose that we are [fol. 43] only concerned with (c)(1) or "inside branches", that is a branch bank located within the same city or town as the parent, we need not pass on (c)(2). Consideration of it in this case will be confined primarily to whatever light it might shed on (c)(1).

The Utah Code Ann., Title 7, Chap. 3, § 6 (1953 as amended) provides as follows:

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[2] 12 U.S.C. § 36(c)(2) provides in pertinent part:

"A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. * * *"

> "Except in cities of the first class, or within unincorporated areas of a county in which a city of the first class is located, no branch bank shall be established in any city or town in which is located a bank or banks, state or national, regularly transacting a customary banking business, unless the bank seeking to establish such branch shall take over an existing bank. No unit bank organized and operating at a point where there are other operating banks, state or national, shall be permitted to be acquired by another bank for the purpose of establishing a branch until such bank shall have been in operation as such for a period of five years."

The parties stipulated that Logan, Utah, is not a city of the first class. Therefore, it is perfectly clear that in Logan, a state bank could not establish a branch bank unless it took over an existing bank which had been in operation for five previous years. The Supreme Court of Utah in Walker Bank & Trust Co. v. Taylor, 15 Utah 2d 234, 390 P.2d 592 (1964) in construing this Utah statute in regard to Provo, Utah, which like Logan is a city of the second class, held [fol. 44] that the only way a branch state bank could be established in a city of less than the first class having an existing unit bank is by taking over such existing bank. The obvious question then to decide is this: Does 12 U.S.C. § 36(c)(1) require the Comptroller to withhold his certificate of approval for the establishment of a national bank branch unless the branch is authorized in all respects by the law of the State in which the bank is located? The court below answered this question in the negative resting its opinion on the premise that § 36(c)(1) embodies only the requirement that inside branching be "expressly authorized" to State banks by State law without other conditions or restrictions of State law. In other words, even though a state bank in an identical situation with that presented here could not establish a branch bank, nevertheless a national bank could because state law generally sanctions

branch banking. For the reasons hereinafter stated, we disagree with the trial court and hold that 12 U.S.C. § 36(c)(1) provides, as Congress intended it should, that the measuring stick of national branch banks is state law.

The history of national bank legislation spans over one hundred years. The present Act was derived from the Act of June 3, 1864, 13 Stat. 99, which was the National Bank Act. During this period, a multitude of changes in the Act [fol. 45] have occurred as various economic problems were encountered. The provisions of the Act affecting branch banking entered the scene in 1927. Before that time branch banking was not generally sanctioned by Congress. See First National Bank v. Missouri, 263 U.S. 640. The Court there noted that the various state laws are binding on the dealings and contracts of national banks unless and until those laws conflict with federal laws or frustrate the purpose for which national banks were created or impair their efficiency. With national banks unable to branch, state banks did branch where state law permitted placing the national banks at a considerable disadvantage in the competitive banking field. It was against this background that Congress provided for national bank branches in the McFadden Act of 1927, 44 Stat. 1224, 1228 on branch banking.[3] Congressman McFadden reported on this bill from the Committee on Banking and Currency. In the beginning, the Committee Report states, "Some of the provisions in the bill extend and enlarge the powers of national banks, but only in the manner in which State banks and trust companies generally have been successfully operating within [fol. 46] recent years."[4] Later in the same report in discussing Section 8 it is stated, "This section recognizes the right of national banks to establish branches within those

[3] "(c) A national banking association may, after the date of the approval of this Act, establish and operate new branches within the limits of the city, town, or village in which said association is situated if such establishment and operation are at the time permitted to State banks by the law of the State in question."

[4] H. Rept. No. 83, 69th Cong., 1st Sess. (1926).

cities in which State banks have that privilege • • • ." Finally, the report concludes in part with, "The cumulative effect of its provisions will produce a situation in the Federal reserve system where the rights of the national banks will be more nearly on a par with those of the State member banks." It seems clear to us at this juncture, that Congress meant in the McFadden Act to put national banks on a par with state banks insofar as branching was concerned, and to do this, they made state law controlling on the question of national bank branches. But our investigation of the history of branch banking cannot end here, for in 1932, owing to the financial crisis of those times, Congress again considered branching by national banks.

In 1932 the Senate considered a bill (Senate Bill 4412) which would allow branch banking by national banks irrespective of the various state laws. Senator Glass, the committee chairman, did point out at the time that this was a highly controversial subject.[5] The main objection the op- [fol. 47] ponents had to this bill concerning the branching provision was that it would constitute an invasion of the sovereign rights of the states to establish federal banks within their boundaries not approved by local policy. Apparently at this time, most states did not approve of branch banking.[6] It was at this time that Senator Bratton[7] of New Mexico offered his amendment to the bill which as modified was finally passed. We deem Senator Bratton's comments in regard to the bill highly noteworthy when in Vol. 76, Cong. Rec. p. 1449, he indicated that under existing law a national bank may engage in branch banking if the law of the state where the national bank is situated permits state banks to do so. Then in commenting on the

[5] Cong. Rec. Vol. 75, p. 9890.

[6] See Cong. Rec. Vol. 75, pp. 9891, 13,002; Vol. 76, pp. 1449, 1997, 2079, 2080, 2090, 2205, 2206.

[7] The Honorable Sam G. Bratton later became a distinguished and highly esteemed member of this court, serving from 1933 until his retirement in 1961.

Glass bill he said, "It is proposed to permit national banks to engage in branch banking whether the law of the State in which a given bank is located permits it or not. It is proposed now to permit national banks to disregard the sentiment of a given State with respect to that question. I think the proposed bill goes too far. It seems to me that the question of whether branch banking shall be permitted [fol. 48] in a given State should be determined by the State." The Bratton Amendment was then presented and adopted in the Glass bill.[8] This amendment concerning branch banking also expanded national banks into outside branches or branches outside the city or town of the parent bank. This is (c)(2) of the present section concerning such banks.

Although the Glass Bill including the Bratton Amendment passed the Senate, it failed to pass the House until the next session when the bill was passed by both houses with the Bratton Amendment intact. Two other Congressional comments made in 1933, when § 36(c) was under consideration in the Congress, one by Senator Glass[9] and the other by

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[8] Cong. Rec. Vol. 76, p. 2205. The amendment read as follows with its amendment.

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches within the limits of the city, town, or village, or at any point within the State in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question and subject to the restrictions as to location imposed by the law of the State on State banks. No such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a paid-in and unimpaired capital stock of not less than $500,000."

[9] Senator Glass, in Vol. 77 Cong. Rec. 3726 (1933) said:

"There was another more or less important provision of the bill passed last spring which is retained in text in this bill, relating to branch banking. It will be recalled that, as reported from your Banking and Currency Committee, the provision authorized national banks to engage in branch banking in the respective States, regardless of State law. The Senate so amended that provision as to authorize national banks to engage in branch banking in those

[fol. 49] Congressman Luce,[10] support our interpretation of this statute.

With this, our review of the history of branch banking and § 36(c) ends. From it all, we are led to the inescapable conclusion that the purpose of allowing national banks to branch was to enable them to fairly compete with state banks. In enabling them to do this, Congress said in the McFadden Act that State law will in each instance determine whether to permit a national bank to branch. This [fol. 50] policy was again carried over in the Banking Act of 1933 through the Bratton Amendment despite the fact that originally the Glass bill sought to change that policy. It seems to us a frustration of that policy to say as the trial court did that merely because a state in a broad general way sanctions branch banking, that is enough to permit a national branch, even though other vital provisions of

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States which by law permit branch banking to State Banks. It went even further under the amendment of the distinguished Senator from New Mexico, and required that the establishment of branch banks by national banks in States which by law permit branch banking should be under the regulations required by State law of State banks.

"How any fair person may properly object to a provision of that sort, I do not understand. We here in the Congress created the national banking system in the emergency of the Civil War. We here restrict it and regulate it. We here legislate for the national banking system; and why anybody should object to putting national banks on a plane of competitive equality with State banks in the respective States we have been unable to understand. Therefore, we have included that provision in this bill just as it passed the Senate."

[10] Congressman Luce stated in Cong. Rec. Vol. 77, p. 5896:

"In the controversy over the respective merits of what are known as 'unit banking' and 'branch banking systems,' a controversy that has been alive and sharp for years, branch banking has been steadily gaining in favor. It is not, however, here proposed to give the advocates of branch banking any advantage. We do not go an inch beyond saying that the two ideas shall compete on equal terms and only where the States make the competition possible by letting their own institutions have branches. In short, we say only that if a State invites the race, let the better horse win. That system which proves itself the better able to serve the people will in the end prevail."

state branching laws are not met. In other words, we believe the proper approach is for the Comptroller to look at all the State law on branch banking not just part of it.[11] While we entertain no doubt of Congress' authority to regulate national banks in whatever way it deems fit, we are convinced that in this area of the law, Congress has restricted its power and acceded to state law which it may [fol. 51] certainly do. It is clear to us that the Congress intended to create and maintain a competitive equality between state and national banks. The trial court's interpretation of Congressional intent is to the contrary and would result in giving the national banks a substantial competitive advantage. The Comptroller exceeded his statutory authority in the issuance of the certificate authorizing appellee bank to establish and maintain the branch bank.

We will refrain from passing on any of the affirmative defenses raised by the answer of The First National Bank of Logan because the trial court must properly be given the first opportunity to determine their merits, if any. The judgment of the tiral court is Reversed and the case is Remanded with directions to reopen the same for the taking of any additional evidence, if offered, on the remaining issues and to make appropriate findings of fact and conclusions of law not inconsistent herewith.

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[11] For other cases tending to support this view although each construing § 36(c)(2) dealing with outside branches instead of (c)(1) see the following. National Bank of Detroit v. Wayne Oakland Bank, 6 Cir., 252 F.2d 537, cert. denied, 358 U.S. 830; State of South Dakota v. National Bank of South Dakota, 219 F. Supp. 842; Commercial State Bank of Roseville v. Gidney, 174 F. Supp. 770, aff'd per curiam, 278 F.2d 871 (D.C.Cir. 1960); and see Rushton Ex Rel. Comr. of Bkg. v. Michigan National Bank, 298 Mich. 417, 299 N.W. 129, 136 ALR 458. We also note, in a factually similar case construing (c)(1) from Utah decided by the U.S. District Court, District of Columbia, held exactly as we do here. Commercial Security Bank v. Saxon, 236 F. Supp. 457 (1964).

[fol. 52]

IN THE UNITED STATES COURT OF APPEALS

JUDGMENT—October 26, 1965

Twenty-Ninth Day, September Term

Before Honorable Orie L. Phillips, Honorable John C. Pickett and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard on the transcript of the record from the United States District Court for the District of Utah and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the trial court is reversed and the case is remanded with directions to reopen the same for the taking of any additional evidence, if offered, on the remaining issues and to make appropriate findings of fact and conclusions of law not inconsistent with the opinion of the court. It is further ordered that Walker Bank & Trust Company, a corporation, appellant, have and recover of and from The First National Bank of Logan, of Logan, Utah, a National banking association, appellee, its costs herein and have execution therefor.

Petition for Rehearing covering 14 pages filed November 12, 1965 omitted from this print. It was denied, and nothing more by order December 3, 1965.

[fol. 53]

IN THE UNITED STATES COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—December 3, 1965

Before Honorable Orie L. Phillips, Honorable John C. Pickett and Honorable Delmas C. Hill, Circuit Judges.

This cause came on to be heard on the petition of appellees for a rehearing herein and was submitted to the court.

On consideration whereof, it is ordered by the court that the said petition be and the same is hereby denied.

[fol. 54] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 55]

SUPREME COURT OF THE UNITED STATES

No. 875, October Term, 1965

THE FIRST NATIONAL BANK OF LOGAN, UTAH, Petitioner,

v.

WALKER BANK & TRUST COMPANY.

ORDER ALLOWING CERTIORARI—May 2, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Tenth Circuit is granted. The case is consolidated with Nos. 1009 and 1126 and two hours are allotted for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.